

REPORT OF THE  
OFFICE OF THE AUDITOR GENERAL  
TO THE  
JOINT LEGISLATIVE AUDIT COMMITTEE

289

THE CALIFORNIA INDEMNIFICATION  
OF PRIVATE CITIZENS PROGRAM

MAY 1977



# Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

## California Legislature



CHAIRMAN  
MIKE CULLEN  
LONG BEACH

MIKE CULLEN  
CHAIRMAN

VICE CHAIRMAN  
VACANCY

ASSEMBLYMEN  
DANIEL BOATWRIGHT  
CONCORD  
EUGENE A. CHAPPIE  
ROSEVILLE  
VACANCY

SENATORS  
GEORGE DEUKMEJIAN  
LONG BEACH  
NATE HOLDEN  
LOS ANGELES  
ALBERT RODDA  
SACRAMENTO

May 2, 1977

The Honorable Speaker of the Assembly  
The Honorable President pro Tempore of  
the Senate  
The Honorable Members of the Senate and the  
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's report on the California Indemnification of Private Citizens (victims of violent crimes) Program.

Although state law presently allows the judiciary to levy a designated fine on the wrongdoer, if found and convicted, to reimburse the program fund, its implementation since 1967 has been disappointing. Only \$80,000 has been recovered as compared to \$9.7 million disbursed. By contrast, the Driver Training Penalty Assessment Fund recovered \$24.3 million in a single year (1975-76).

The auditors are Gerald A. Silva and R. Lilia Molina.

Respectfully submitted,

MIKE CULLEN, CHAIRMAN  
Joint Legislative Audit Committee

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
INTRODUCTION	1
HISTORY OF THE INDEMNITY FUND	5
AUDIT RESULTS	
Fines and restitution have not been a significant source of funding for the indemnity fund	10
Recommendation	18
Opportunities to recover monies through the lien or subrogation process may be lost	19
Recommendation	22
Delays in claim processing can cause undue hardship on victims	23
Recommendation	29
APPENDICES:	
Appendix A - Summary of Victim Compensation Programs in Other States	A-1
Appendix B - Summary of Statutory Provisions of Each State that has Passed a Victim Compensation Program	B-1

## SUMMARY

California was the first state to implement a program to compensate victims of violent crime. The California Indemnification of Private Citizens Program provides a maximum of \$23,500 in compensation to an individual claimant for medical expenses, loss of wages or support, job retraining or similar employment-oriented rehabilitative services and attorney fees.

Since 1967, when the State Board of Control assumed responsibility for the program, until December 31, 1976, \$9,702,703 in awards has been paid to victims of crime through the Indemnification of Private Citizens Program. During that same period only \$80,145 had been recovered from the perpetrators of crimes whose victims were compensated by the program.

Under California law, there are four basic procedures available for recovering money paid from the California Indemnification of Private Citizens Program or Indemnity Fund. Those procedures are: court-imposed fines, restitution, subrogation and liens.

Court-imposed fines and restitution have not been a significant source of funding for the Indemnity Fund. Our survey of California Superior and Municipal Court judges revealed that while 94 percent of the

responding judges would consider imposing a fine or ordering restitution to support the Indemnity Fund, a majority of these judges anticipated problems in doing so. The most common problems cited by the judges were the inability of defendants to pay the fine or restitution and collection or enforcement problems.

As of January 1, 1977, 17 states had programs to compensate victims of violent crime. Of these states, Delaware and Maryland have collected the most money from criminals as a means of funding their programs. Both of these states provide for mandatory but nominal court-imposed fines in addition to other court fines or imprisonment. Three other states, Virginia, Pennsylvania and Ohio, have similar mandatory but nominal court-imposed fine provisions, but the victim programs for these states did not go into effect until after June 1976. In California, the Commission On Peace Officer Standards and Training (POST) and the Driver Training Penalty Assessment Fund receive funds from penalties imposed on criminal and traffic fines.

Liens have been the most successful method of recovering money. However, the State may have lost opportunities to recover money through the lien process because the Attorney General's Office was unaware that a victim who received compensation from the Indemnity Fund had instituted a court action to recover damages. Under California law, the State may intervene in such court actions and recover the amount of cash payments made from the Indemnity Fund. North Dakota requires a victim of a violent crime who has been compensated by the victim

program to notify the State prior to instituting any court action to recover damages.

The current processing time for victim indemnification claims submitted to the Board of Control can impose an undue hardship on applicants. As of January 1, 1977, nine states that had victim compensation programs also provided for emergency compensation to victims of violent crime in those cases where the granting of an award was probable and undue hardship would result to the claimant if immediate payment were not made. California does not provide emergency payments to victims.

On pages 18, 22 and 29, we recommend legislative action to increase recoveries for the Indemnity Fund and the General Fund, and to provide for emergency payments to victims when warranted.

In accordance with the Joint Legislative Audit Committee's rules and procedures, the State Board of Control was provided with a draft of this report for their review and comment. The Board of Control did not exercise their right to submit a written response for inclusion in this report.

## INTRODUCTION

In response to a resolution of the Joint Legislative Audit Committee, we have examined the California Indemnification of Private Citizens Program. This examination was conducted under the authority vested in the Auditor General by Section 10527 of the Government Code.

California was the first state to implement a program to compensate victims of violent crime. The California Indemnification of Private Citizens Program provides compensation to needy California residents who are victims of crimes of violence, are financially dependent upon a victim, or sustain damages or injuries as a result of acts benefiting the public. The maximum amounts that may be awarded to a victim of a violent crime are: \$10,000 for medical or medically related expenses; \$10,000 for loss of wages or support; \$3,000 for job retraining or similar employment-oriented rehabilitative services; and \$500 for attorney fees.

The California Indemnification of Private Citizens Program was established in 1965 and administered by the Department of Social Welfare until 1967 when the State Board of Control assumed program responsibility. The Board of Control consists of the Director of General Services and the State Controller, both acting ex officio, and a third member who is appointed by the Governor.

A victim of a violent crime may file an application for assistance with the Board of Control provided the victim was a resident of California at the time the crime was committed. The Board of Control approves or disapproves an application after its staff and the Attorney General's Office have reviewed the application. The Board of Control will approve an application if it finds that as a direct result of the crime, the victim incurred an injury which resulted in a pecuniary loss which the victim will be unable to recoup without suffering serious financial hardship. However, the Board of Control shall not approve an application if it finds that:

- The victim knowingly and willingly participated in the commission of the crime.
- The victim failed to cooperate with a law enforcement agency in the apprehension and conviction of the criminal.
- The nature of the victim's involvement in the events leading to the crime preclude approving the application.
- The victim will not suffer serious financial hardship as a result of the injury.



During fiscal year 1976-77 the Board of Control has budgeted \$231,923 to administer the Indemnification of Private Citizens Program, and the Attorney General's Office has budgeted an additional \$713,994 to investigate applications for assistance. The Indemnification of Private Citizens Program is primarily funded by the General Fund and to a substantially lesser degree by payments from perpetrators of crimes whose victims receive relief from the program.

Since 1967, when the Board of Control assumed responsibility for the program, until December 31, 1976, \$9,702,703 in awards have been paid to victims of crime through the Indemnification of Private Citizens Program. During that period only \$30,364 was collected from the perpetrators of crimes whose victims were compensated by the Indemnification of Private Citizens Program. An additional \$49,781 has been collected and paid into the State General Fund as a result of third-party liens.

This report identifies the problems associated with recovering money from the perpetrators of crimes whose victims were compensated by the Indemnification of Private Citizens Program. As a means of accomplishing this, the California legal community was surveyed. Information was also requested from other states that have programs to compensate victims of violent crime to ascertain what their experience has been in recovering funds from the perpetrators of crimes. In addition, the operations of the Board of Control and the Attorney General's Office, as they relate to the processing of victims' claims for indemnification, were reviewed.

The Office of the Auditor General wishes to express its gratitude to the many people and agencies that contributed to the preparation of this report.

### HISTORY OF THE INDEMNITY FUND

In 1965 the California Legislature amended the Welfare and Institutions Code so that any person, or the family of any person, killed or incapacitated as a result of a violent crime would be eligible to receive aid from the State. The statute also provided that a California court could impose a fine on a defendant convicted of a crime of violence which resulted in the injury or death of another person.

In 1967 the California Legislature enacted the Indemnification of Private Citizens Program and placed it under the administration of the State Board of Control as part of the Government Code. Since 1967 the program has experienced tremendous growth as evidenced by the fact that during fiscal year 1967-68 the program paid \$16,513 to victims, while during the first six months of fiscal year 1976-77 alone, the program paid more than \$2.4 million to victims.

Since July 1, 1967, to December 31, 1976, the Victims of Crime Program had paid \$9,702,703 to victims of violent crimes; however, during that same period only \$80,145 has been recovered from persons convicted of crimes. Under California law there are four basic procedures available for recovering money paid from the California Indemnification of Private Citizens Program or Indemnity Fund. These procedures are as follows:

Court Imposed Fines:	When a person is convicted of a crime, the court may order the defendant to pay a fine not to exceed \$10,000, provided that the imposition of a fine will not place the defendant's dependents on public welfare.
Restitution:	Payment to the victim by the criminal. Such payments are a condition of probation and are ultimately paid to the Indemnity Fund.
Subrogation:	Payments to the victim from the Indemnity Fund "subrogate" (substitute) the State to the rights of the victim to bring court action to recover money from the perpetrator of the crime.
Liens:	The State is entitled to a "lien" in the amount of cash payments made from the Indemnity Fund on any recovery made by or on behalf of the victim. The State may recover such monies in a separate court action or may intervene in a court action brought by or on behalf of the victim.

The following table summarizes payments from the Indemnity Fund and recoveries from those convicted of crimes from fiscal year 1967-68 to December 31, 1976.

TABLE 1

HISTORY OF INDEMNITY FUND  
 PAYMENTS AND RECOVERIES FROM JULY  
1967 TO DECEMBER 31, 1976\*

<u>Year</u>	<u>Amounts Paid to Victims</u>	<u>Recoveries</u>			
		<u>Total</u>	<u>Liens</u>	<u>Restitution</u>	<u>Fines</u>
1967-68	\$ 16,513.65	\$ -0-	\$ -0-	\$ -0-	\$ -0-
1968-69	78,688.57	3,315.50	-0-	3,315.50	-0-
1969-70	171,644.26	4,796.90	-0-	4,796.90	-0-
1970-71	383,779.49	467.00	-0-	467.00	-0-
1971-72	523,359.13	2,643.75	1,436.80	1,206.95	-0-
1972-73	717,709.40	60.00	-0-	60.00	-0-
1973-74	1,375,101.32	8,847.54	8,795.85	51.69	-0-
1974-75	1,418,539.63	8,654.18	5,450.00	3,204.18	-0-
1975-76	2,603,735.86	18,411.36	10,255.81	7,505.55	650.00
Six months ending 12/31/76	<u>2,413,631.48</u>	<u>32,948.33</u>	<u>23,842.22</u>	<u>7,646.11</u>	<u>1,460.00</u>
Total	<u>\$9,702,702.89</u>	<u>\$80,144.56</u>	<u>\$49,780.68</u>	<u>\$28,253.88</u>	<u>\$2,110.00</u>

\* Statistics are unavailable for the period prior to July 1967.

Following is a discussion of problems associated with recovering money from the criminals whose victims were compensated by the Indemnification of Private Citizens Program.

## AUDIT RESULTS

### FINES AND RESTITUTION HAVE NOT BEEN A SIGNIFICANT SOURCE OF FUNDING FOR THE INDEMNITY FUND

Section 13967 of the Government Code states that when a person is convicted of a violent crime, if the court finds that the defendant has the present ability to pay a fine and finds that the imposition of a fine will not place the defendant's dependents on public welfare, then, in addition to any other penalty, the court may order the defendant to pay a fine, not to exceed \$10,000, commensurate with the offense committed. These fines are to be deposited in the Indemnity Fund. In January 1976, the Attorney General sent letters to the district attorneys and administrative offices of the courts in California calling their attention to Government Code Section 13967 and requesting their cooperation in imposing appropriate fines.

As of December 31, 1976, however, only \$2,110 in fines had been imposed and subsequently deposited in the Indemnity Fund. When contrasted with the 38,007 felony convictions during 1974, it appears that the California courts are not responding to the Attorney General's request that appropriate fines be imposed.



Restitution is authorized as a part of probation by Section 1203.1 of the Penal Code which states in part:

... The court or judge thereof, in the order granting probation ... may provide for reparation in proper cases. ... In all cases of probation the court is authorized to require as a condition of probation that the probationer go to work and earn money . . . to pay any fine imposed or reparation condition, to keep an account of his earnings, to report the same to the probation officer and apply such earnings as directed by the court . . . The court may impose and require any . . . terms of imprisonment, fine and conditions . . . to the end . . . that amends may be made to society for the breach of the law, for any injury done to any person resulting from such breach . . . should the probationer violate any of the terms or conditions imposed by the court . . . it shall have authority to modify and change any and all such terms and conditions and to reimprison the probationer . . .

Generally restitution monies are received by the Board of Control on a periodic and recurring basis. This distinguishes restitution recoveries from fine recoveries which are paid on a one time payment basis. As a result, restitution recoveries usually involve additional bookkeeping and administrative efforts on the part of the Board of Control.

As of December 31, 1976, the Board of Control had collected \$28,254 in restitution monies. These monies are paid to the Indemnity Fund in repayment for awards previously made from the fund. Restitution as a condition of probation, like fines, has been infrequently imposed by California courts.

A recent survey conducted by the Office of the Auditor General of the 850 California Superior and Municipal Court judges revealed why Government Code Section 13967 and the ordering of restitution have been so infrequently applied. The survey revealed that, while 94 percent of the judges responding would consider imposing a fine or ordering restitution to help fund the Indemnity Fund, a majority of these judges also anticipated problems in doing so. The most common problems cited by the judges were the inability of defendants to pay the fine or restitution and collection or enforcement problems. A few responses cited In re Antazo, 3 C.3d 100, a 1970 case which raised constitutional issues surrounding the imposition of a fine when a defendant is indigent and non-payment of such a fine will lead to imprisonment. Some of the other responses questioned the constitutionality of a fine or restitution used to reimburse victims.

Some of the judges surveyed cited the wording of Government Code Section 13967 as a problem. One judge suggested that the word "present" be eliminated from Section 13967 as many defendants may not have the "present" ability to pay, but might have the ability to pay at some time in the future. Another judge indicated that the determination of financial impact on the defendant's dependents created a burden for the court and was time-consuming as well. Still another judge questioned the wording of the statute by asking what criteria should be considered when addressing the "fine commensurate with the offense" concept.

Other problem areas regarding Government Code Section 13967 and the ordering of restitution identified by the judges surveyed were:

- A lack of coordination between the court and the Indemnity Fund.
- Possible curtailment of county revenues.
- The time involved in holding an appropriate hearing.
- Administrative problems created by installment payments.
- Lack of uniformity in the imposition of a fine.
- The constitutionality of imposing a fine at a hearing to determine ability to pay when the defendant is not represented by counsel.
- Cases involving multiple defendants or victims.
- Determining the amount of the fine.
- The impact other statutes have on the amount of the fine.
- A lack of awareness of the Indemnification of Private Citizens Program by prosecuting agencies, legal counsel, the public, judges and probation officers.

- The insufficiency of \$10,000 in some cases.
- A potentially significant increase in requests for appointment of counsel to properly represent parties.

Many of the judges surveyed also commented on the concept of victim indemnification in general and its compatibility with current court procedures. They wrote:

. . . Although this statute has been in existence for a number of years, I cannot recall a single instance when such an order was requested or imposed. The prosecuting agencies should be made aware of this procedure for plea bargaining purposes . . .

. . . The provision was sparingly applied. I believe the reasons . . . were the urgency to get on to the next case . . .

. . . Judges generally do not use it. More information should be disseminated . . .

. . . The entire area of victim services is neglected. Information concerning their rights should be routinely furnished by public agencies that become aware of their compensable injuries. The court infrequently has contact with the victim . . .

. . . I have ordered such fines but never know whether they have been paid. The . . . probation office was not aware of what to do in these cases . . .

. . . Not at all coordinated or integrated with the court process.

Many of the judges surveyed offered constructive suggestions as to how additional monies could be paid to the Indemnity Fund. For example, one judge suggested that legislation be enacted to authorize the transfer of unclaimed restitution monies, which are held by local probation offices, to the Indemnity Fund. Another judge wrote:

. . . (it) would make more sense and give uniformity if a standard percentage were added to each fine for this purpose . . .

The insignificance of the fines and restitution orders that have been imposed as of December 31, 1976 and the results of the survey of California Superior and Municipal Court judges demonstrate the reluctance of the courts to impose the fine provision of Government Code Section 13967 or to make restitution a condition of probation.

As of January 1, 1977, 17 states had programs to compensate victims of violent crime. Four other states, Michigan, Rhode Island, Tennessee and Virginia, have passed legislation to establish victim compensation programs either at some future date or upon the passage of similar federal legislation. In addition, Nevada has a program to compensate persons (or their dependents in the event of death) who are injured or killed while attempting to prevent the commission of a crime or aid a police officer to arrest a suspected criminal. Louisiana repealed its victim compensation program during the 1976 legislative session due to a lack of funding for the program.

Of the 18 states with victim compensation programs, Delaware and Maryland have collected the most money from criminals as a means of funding their programs.

Both of these states provide for mandatory but nominal court imposed fines on persons assessed other court fines or convicted of crimes. Three other states, Virginia, Pennsylvania and Ohio, have similar

mandatory but nominal court imposed fine provisions, but the victim compensation programs for these states did not go into effect until after June 1976.

Oklahoma does not have a victim compensation program. However, since October 1976, restitution by the criminal to the victim has been a condition of probation or parole. Failure to pay restitution is grounds for revocation of probation or parole. Like Oklahoma, Oregon does not have a victim compensation program; however, Multnomah County in Oregon has initiated a Victim's Assistance Project which includes a restitution provision. Restitution to victims is paid through the court and is monitored through a computerized process. Victims are periodically contacted by project staff to determine if restitution is being paid. During the first 14 months of Multnomah County's Victim Assistance Project, \$494,329 in restitution had been ordered by the courts.

Appendix A summarizes the activity of other state victim compensation programs during fiscal years 1973-76 as to the number of claims received, awards made to victims, amounts paid to victims and amounts collected from criminals.

If Government Code Section 13967 were amended to provide for a mandatory but nominal fine similar to that in the five other states, the Indemnity Fund could receive several hundred thousand to several million dollars per year in additional funding. Furthermore, the

administration and constitutional problems currently associated with court imposed fines and restitution could be avoided.

The amount of additional funding that would accrue to the Indemnity Fund is dependent upon the types of criminal acts that would be subject to a fine and the amount to be imposed for each conviction. For example, in 1974 there were 38,007 Lower and Superior Court felony convictions in California. A \$3 fine imposed on these convictions would have generated only \$114,021 in revenue to the Indemnity Fund. However, as a matter of contrast, the California Commission on Peace Officer Standards and Training (POST) and the Driver Training Penalty Assessment Fund annually receive \$36 million from penalties imposed on criminal and traffic fines.

The POST Fund is funded by an assessment of \$5 on each \$20 (or fraction thereof) of criminal fines and 25 percent of \$5 on each \$20 (or fraction thereof) of traffic fines levied by municipal and justice courts. The remaining 75 percent of the penalty assessment on traffic fines is deposited in the Driver Training Penalty Assessment Fund. During fiscal year 1975-76 the POST Fund received \$3,496,584 from penalties on criminal fines and \$8,312,945 from penalties on traffic fines. The Driver Training Penalty Assessment Fund received \$24,290,778 from penalties on traffic fines during the same period.

### CONCLUSION

The court imposed fine provision of Government Code Section 13967 and court ordered restitution have not been a significant source of funding for the Indemnity Fund. It appears unlikely court imposed fines or restitution will ever be a viable source of funding for the Indemnity Fund unless the administrative and constitutional problems associated with these procedures are resolved.

### RECOMMENDATION

The Legislature should expand Government Code Section 13967 to provide for mandatory but nominal court imposed fines for certain criminal offenses.

### BENEFITS

The Indemnity Fund could receive several hundred thousand to several million dollars in additional funding annually, depending on the types of criminal acts that would be subject to a fine and the amount to be imposed for each conviction. These additional funds would reduce the Indemnity Fund's dependency on the State General Fund. In addition, by making the imposition of such fines mandatory yet nominal, the administrative and constitutional problems currently associated with court imposed fines and restitution would be avoided.



OPPORTUNITIES TO RECOVER MONIES THROUGH  
THE LIEN OR SUBROGATION PROCESS MAY BE LOST

Section 13966 of the Government Code states:

The State of California shall be subrogated to the rights of the victim to whom cash payments are granted to the extent of the cash payments granted, less the amount of any fine imposed by the court on the perpetrator of the crime. Such subrogation rights shall be against the perpetrator of the crime or any person liable for the pecuniary loss.

The state also shall be entitled to a lien in the amount of such cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the victim . . .

Subrogation differs from a lien in that in order for the State to invoke its subrogation privileges it must institute a civil action against the perpetrator of the crime. In a lien situation, the victim institutes a civil action against the perpetrator and the State joins the action as a third party. Subrogation is not used to recover monies for the Indemnity Fund because of the state time and expense that is required and the unlikelihood of recovery.

Liens, however, have been the most successful method of recovering money. Between fiscal year 1971-72 and December 31, 1976, liens have generated \$49,780 in recoveries. Lien recoveries are deposited in the State General Fund. As of December 1976, 60 lien cases had been opened, of which 20 were completed and 40 were still in process. No liens were filed prior to fiscal year 1971-72 and, according to a representative of the Attorney General's Office, very little attention was given to lien cases prior to January 1976.

Lien cases require direct intervention by the Attorney General's Office. Such intervention usually involves attending trial conferences where the victim's claims and the State's lien rights are negotiated. Often, the Attorney General's representative and the claimant's attorney agree to a reduced lien. As a general rule the State will recover one-half of the full lien amount.

The major problem with lien procedures is that the State does not become involved until after the victim has instituted court action against the criminal. It is the responsibility of the claim specialist in the Attorney General's Office to determine if a suit has been filed; however, there are no definite procedures to notify the Attorney General or the Board of Control when a suit has been filed. As a result, the State may lose opportunities to recover money through the lien process because the Attorney General's Office is unaware that a suit has been filed.

During our review of other state's victim compensation programs we discovered that North Dakota requires a victim of a violent crime who has been compensated by the victim compensation program to notify the State prior to instituting any court action to recover damages related to the incident. Section 65-13-14 of the North Dakota Workmen's Compensation Code reads in part:

. . . If reparations are awarded, the state is subrogated to all the claimant's rights to receive or recover benefits or advantages, for economic loss for which and to the extent only that reparations are awarded, from a source which is, or, if readily available to the victim or claimant, would be, a collateral source.

As a prerequisite to bringing an action to recover damages related to criminally injurious conduct for which reparations are claimed or awarded, the claimant shall give the board prior written notice of the proposed action. After receiving the notice, the board shall promptly:

- a. Join in the action as a party plaintiff to recover reparations awarded;
- b. Require the claimant to bring the action in his individual name, as a trustee in behalf of the state, to recover reparations awarded; or
- c. Reserve its rights and do neither in the proposed action.

If, as requested by the board, the claimant brings the action as trustee and recovers reparations awarded by the board, he may deduct from the reparations recovered in behalf of the state the reasonable expenses, including attorney's fees, allocable by the court for that recovery . . .

If Government Code Section 13966 were amended to require victims who have received compensation from the Indemnity Fund to notify the Attorney General's Office of any court actions to recover damages related to the incident, the State would be aware of all opportunities to recover money for the Victim Indemnity Program through the lien process. The North Dakota Crime Victim Reparations Program began on July 1, 1975, and only 12 awards had been made as of June 30, 1976. Therefore, it is too soon to tell if the North Dakota statute will generate significant recoveries for their victim program. It cannot be estimated how much additional money would be recovered for the Victim Indemnity Fund if this procedure were adopted in California.

### CONCLUSION

The State may lose opportunities to recover money through the lien process because the Attorney General's Office is unaware that suits to recover damages have been filed.

### RECOMMENDATION

Government Code Section 13966 should be amended to require victims who have received compensation from the Indemnity Fund to notify the Attorney General's Office of any court actions to recover damages related to the incident.

### BENEFITS

The State would be aware of all opportunities to recover money for the Indemnification of Private Citizens Program through the lien process.

DELAYS IN CLAIM PROCESSING CAN  
CAUSE UNDUE HARDSHIP ON VICTIMS

The current processing time for victim indemnification claims submitted to the Board of Control can impose an undue hardship on applicants. As of January 1, 1977, nine states that had victim compensation programs also provided for emergency compensation to victims of violent crime in those cases where the granting of an award is probable and undue hardship would result to the claimant if immediate payment were not made. California does not provide emergency payments to victims.\*

In March 1976, the Department of Finance published a report entitled A Review of the Indemnification of Private Citizens Program. The Department estimated in this report that the average processing time for victim indemnification claims that were completed between July 1, 1974 and October 31, 1975 was 8.1 months. The average processing time for victim indemnification claims that were heard by the Board of Control at its Los Angeles meeting on January 17 and 18, 1977, was 13.4 months. It should be noted that the Board of Control meets in Los Angeles much less frequently than it does in Sacramento. Therefore, the processing time for these claims, while not representative of the normal processing time, is indicative of how long it can take to process a claim.

\* Appendix B summarizes the statutory provisions of each state that has passed a victim compensation program.

### Procedure for Processing Claims

When a victim indemnification claim is received by the Board of Control it is date stamped and a letter of acknowledgement and a questionnaire are sent to the claimant. The claimant is required to return the questionnaire to the Board within 45 days.

Returned questionnaires are routed to the Attorney General's Office where an investigation is performed by either claim specialists or investigators to ascertain the facts as they pertain to the claim. During this stage of processing police departments and insurance companies are contacted, medical and financial information is documented, and determinations are made regarding apprehensions, civil action taken by the victim and restitution or fines ordered by the courts. After the Attorney General's Office completes its investigation a recommendation is proposed for the claim and it is returned to the Board of Control.

Returned claims are reviewed by the Board of Control and it too prepares a proposed recommendation. At this time a notice of hearing is sent to the claimant which informs the claimant of the hearing date (usually 2 to 6 weeks after the notice is sent) and of the proposed action. Claimants have the right to appear or be represented by counsel before the Board of Control at the hearing.

During these hearings the Board of Control decides whether to allow, deny or continue the claim. Continued claims are rescheduled for a later meeting of the Board. Claims are usually continued for the following reasons: 1) the claimant's attorney requests that the claim be continued, 2) conflicting testimony between the claimant and the Attorney General's Office, and 3) incomplete information regarding the claim.

During fiscal year 1975-76, the Board of Control received 6,518 applications for compensation from victims of violent crimes. Of these applications, 1,586, or 24 percent, were rejected. Rejected applications included cases in which the claimed loss was a personal property loss or the alleged incident was not reported to the police. The Board approved payment for 1,468 claims and denied 2,452 claims. The following table summarizes the victim indemnification claims denied by the Board of Control during fiscal year 1975-76.

TABLE 2

Summary of Victim Indemnification  
Claims Denied by the Board of Control  
During Fiscal Year 1975-76

<u>Reason for Denial</u>	<u>Number of Claims</u>	<u>Percentage of Denied Claims</u>
Claimant Did Not Return the Questionnaire to the Board	1,675	69%
Claimant Did Not Incur A Monetary Loss	277	11
Claimant Contributed In Commission of the Crime	197	8
Claimant Failed to Cooperate With Law Enforcement Agencies	85	4
Claimant Did Not Incur Any Financial Hardship	74	3
No Evidence of a Violent Crime	52	2
Claimant Was Not a Resident of California	28	1
Claimant's Loss Was Less Than \$100	27	1
Other	<u>37</u>	<u>1</u>
Total	<u>2,452</u>	<u>100%</u>



### Processing Time

At its January 17 and 18 meetings in Los Angeles the Board of Control reached decisions on 191 claims. The Board approved payment for 90 claims, denied 70 claims and continued 31 claims to a later hearing. Of the 160 claims that were either allowed or denied by the Board the shortest processing time<sup>\*</sup> was four months and the longest was nearly 26 months. The average processing time for these claims was 13.4 months, of which 5.7 months represent the time required by the Attorney General's Office to investigate the claims. However, the date the Board approves a claim for payment is not the date the victim is paid. An additional 4 to 6 weeks are required to issue a payment to the victim unless the claim is processed through the Rush Claim Procedure at the Controller's Office. The Rush Claim Procedure allows for one day processing of payments to victims as opposed to the current 4 to 6 weeks. According to officials at the Board of Control, victim claims are processed through the Rush Claim Procedure only infrequently.

### Undue Hardship Caused by Lengthy Processing Time

The following cases exemplify the hardships a victim of a violent crime may be forced to endure while the application for assistance is being processed. These cases were drawn from the Board of Control's files.

\* Processing time refers to the time elapsed from the date the initial application is received by the Board of Control, to the date the Board renders its decision to allow or deny the claim.

Case 1

- On January 25, 1975, the victim gave chase to suspects who were in the act of an armed robbery of a supermarket. The victim confronted the suspects and was shot in the mouth at point blank range. The bullet lodged in the victim's spinal column. The victim lost seven teeth, underwent surgery to remove the bullet, suffered partial paralysis and swelling of the hands and feet. On July 15, 1975, the Board of Control received an application for assistance from the victim. While the claim was being processed, the Board of Control was notified that a bank was preparing to repossess the victim's home. The Board negotiated with the bank for two weeks to prevent repossession of the victim's home and ultimately sent a letter to the effect that the victim's claim would be expedited as possible. On January 6, 1976 the Board approved a partial award of \$5,000, which was processed through the Rush Claim Procedure at the Controller's Office, and a check was issued one week later. As of April 4, 1977, the Board had awarded the victim \$11,600.

Case 2

- On May 28, 1976, the victim was severely beaten about the face and head in his own home during an armed robbery attempt. The victim eventually dove through a window to avoid being killed by his assailant. The victim suffered extreme facial and dental destruction and had to have his jaw wired shut. On July 8, 1976, the Board of Control received an application for assistance from the victim. While the claim was being processed the Board of Control was notified that the hospital that had treated the victim would not readmit the victim for follow-up surgery unless unpaid medical bills from the initial admission were settled. The Board and the Attorney General's Office initiated action to process the victim's claim on an emergency basis and the hospital was informed that steps were being taken to expedite the victim's claim. The victim was readmitted to the hospital and on September 8, 1976, the Board approved a partial award of \$11,581.22. This claim was not processed through the Rush Claim Procedure and a check was not issued until October 14, 1976, or five weeks later. As of April 4, 1977, the Board had awarded the victim \$13,631.00.

According to the Board of Control the above instances are not exceptional cases. While other cases may not be as dramatic as these, many victims suffer undue financial hardship while their applications for assistance from the Indemnity Fund are being processed. It is notable that the Board assisted the victims in the cases noted above; however, such extraordinary efforts would not be necessary if an alternative to the current time-consuming claim process were available.

#### CONCLUSION

The current processing time for victim indemnification claims submitted to the Board of Control can impose an undue hardship on applicants.

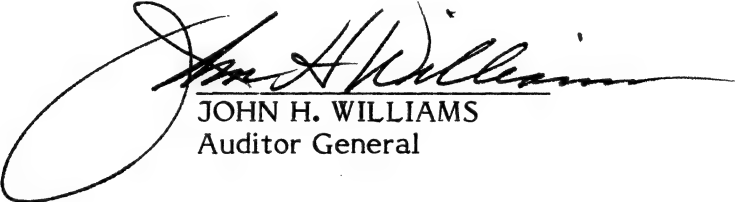
#### RECOMMENDATION

Legislation should be enacted to provide for emergency compensation to victims of violent crime in those instances where the granting of an award is probable and undue hardship would result to the claimant if an interim payment were not made. In addition, emergency payments should be routinely processed through the Rush Claim Procedure at the Controller's Office.

BENEFITS

Victims would receive assistance as quickly as possible, thereby mitigating to some degree the consequences of a violent crime.

Respectfully submitted,



JOHN H. WILLIAMS  
Auditor General

Dated: April 28, 1977

Staff: Gerald A. Silva  
R. Lilia Molina

**SUMMARY OF VICTIM COMPENSATION  
PROGRAMS IN OTHER STATES**

State	Summary of Program Activity During				Collections From Criminals					Comments of Program Administrators
	Time Period	Number of Claims Received	Number of Awards Granted	The Last Three Fiscal Years		Fines	Liens	Other		
				Amounts	Amounts			Subrogation	Source	
Alaska	FY 1974	50	32	\$ 36,025	\$ -0-	\$ -0-	-0-	\$ -0-	N/A	Subrogation proceedings are the responsibility of the Attorney General. Information is not available as to amounts collected via subrogation proceedings.
	FY 1975	71	*	125,266	-0-	-0-	-0-	-0-		
	FY 1976	68	*	272,948	-0-	-0-	-0-	-0-		
Delaware	FY 1975	-0-	-0-	-0-	135,103	-0-	-0-	See Comments	N/A	Subrogation proceedings are the responsibility of the Attorney General. Information is not available as to amounts collected via subrogation proceedings.
	FY 1976	76	48	94,959	185,811	-0-	-0-			
	July 1976-Jan. 31, 1977	50	25	91,644	137,345	-0-	-0-			
Georgia	CY 1974	26	16	42,355	-0-	-0-	-0-	-0-	N/A	Subrogation proceedings are the responsibility of the Attorney General. Information is not available as to amounts collected.
	CY 1975	35	14	14,909	-0-	-0-	-0-	-0-		
	CY 1976	40	14	33,774	-0-	-0-	-0-	-0-		
Hawaii	CY 1974	165	116	168,353	-0-	-0-	-0-	See Comments	N/A	Subrogation rarely invoked. No subrogation cases concluded.
	CY 1975	257	163	265,810	-0-	-0-	-0-			
	CY 1976	274	162	223,847	-0-	-0-	-0-			
Illinois	Oct. 1, 1973 - Nov. 30, 1976	3100	1550**	1,200,000	-0-	-0-	-0-	See Comments	N/A	Legislation for Kentucky's Victim Compensation Program became effective June 19, 1976.
Kentucky	June 19, 1976-Dec. 6, 1976	*	1	1,382	-0-	-0-	-0-	-0-	N/A	Legislation for a Victim Compensation Program was repealed at the last session of the Legislature. No money was ever made available for the program.
Louisiana	See Comments									

Subrogation proceedings are the responsibility of the Attorney General. Information is not available as to amounts collected via subrogation proceedings.

Subrogation proceedings are the responsibility of the Attorney General. Information is not available as to amounts collected.

Subrogation rarely invoked. No subrogation cases concluded.

Legislation for Kentucky's Victim Compensation Program became effective June 19, 1976.

Legislation for a Victim Compensation Program was repealed at the last session of the Legislature. No money was ever made available for the program.

\* Information not available  
\*\* Estimated

Summary of Program Activity During				Collections From Criminals					Comments of Program Administrators
The Last Three Fiscal Years				Other					
State	Time Period	Number of Claims Received	Number of Awards Granted	Amounts	Fines	Liens	Subrogation	Source	Amount
Maryland	FY 1974	459	180	\$ 771,766	\$104,964	-0-	\$		
	FY 1975	638	324	1,577,644	118,063	-0-	See Comments		
	FY 1976	511	413	1,700,588	131,542	-0-			
Massachusetts	July 1, 1973- June 30, 1976	***	***	2,110,464	-0-	-0-	See Comments		
Michigan	See Comments								
Minnesota	July 1, 1974 - June 30, 1976	580	269	332,425	-0-	-0-	1,400	Restitutions	\$ 369
Nevada	July 1, 1973- June 30, 1976	34	9	28,960	-0-	-0-	-0-	N/A	
New Jersey	Jan. 1974- June 1976	2625	*	2,230,658	-0-	-0-	See Comments	N/A	
New York	FY 1974	2065	891	1,834,966	-0-	-0-	157	Refunds	7,527
	FY 1975	2341	1074	2,526,132	-0-	-0-	1,777		18,900
	FY 1976	3119	1097	2,979,224	-0-	-0-	16,713		13,391
* Information not available									
*** From April 1, 1975 to June 30, 1976, 562 claims were filed and 376 awards were granted.									

\* Information not available  
 \*\*\* From April 1, 1975 to June 30, 1976, 562 claims were filed and 376 awards were granted.

Subrogation is used, however the state does not insist on full subrogation. Information is not available as to amounts collected via subrogation proceedings.

The right of subrogation is not of much value. Information is not available as to amounts collected in subrogation proceedings.

Legislation to establish Michigan's Victim Compensation Program will not go into effect until October 1, 1977.

Subrogation is a futile procedure since only 10% of the crimes committed in New Jersey have a known offender and very few of these are solvent.

VICTIM INDEMNITY FUND  
SUMMARY OF RESPONSES FROM OTHER STATES

State	Time Period	Summary of Program Activity During The Last Three Fiscal Years		Collections from Criminals					Comments of Program Administrators
		Number of Claims Received	Number of Awards Granted	Amounts	Fines	Liens	Subrogation	Source	
North Dakota	FY 1976	32	12	\$18,080	\$ -0-	\$ -0-	\$ -0-	N/A	The North Dakota Crime Victim Reparations Program began on July 1, 1975.
Ohio	See Comments								Ohio's Victim Compensation Program went into effect September 29, 1976. No awards have been made as of December 31, 1976.
Oklahoma	July 1, 1975 - Aug. 1976	See Comments		28,573	-0-	-0-	N/A	Restitution	Oklahoma does not have a Victim Compensation Program, however, in Oklahoma restitution by the criminal to the victim has been part of probation or parole since October 1976.
Oregon	July 1, 1975 - Aug. 1976	See Comments		-0-	-0-	-0-	-0-	Restitution	Oregon does not have a Victim Compensation Program, however, Multnomah County has a Victim's Department which is funded by National LEAA Discretionary Funds.
Pennsylvania	See Comments								Pennsylvania's Victim Compensation Law went into effect November 8, 1976.
Rhode Island	See Comments								Rhode Island passed legislation relative to funds for victims of crime which will not become effective until similar Federal legislation is passed.
Tennessee	See Comments								Tennessee passed their Criminal Injuries Compensation Act during the 1976 legislative session. The program had not been implemented as of December 31, 1976 due to a lack of funding.

VICTIM INDEMNITY FUND  
SUMMARY OF RESPONSES FROM OTHER STATES

State	Summary of Program Activity During The Last Three Fiscal Years			Collections from Criminals					Comments of Program Administrators
	Time Period	Number of Claims Received	Number of Awards Granted	Amount	Fines	Liens	Subrogation	Source	
Virginia	As of July 1977**	See comments		\$ -0-	\$200,000	\$-0-	\$-0-	N/A	Virginia's Victim Compensation Program will not go into effect until July 1977. Funds for the program are being accumulated currently.
Washington	July 1974 June 1976	1712	1199	1,161,213	-0-	-0-	-0-	N/A	
Wisconsin	See comments								Wisconsin's Victim Compensation Program went into effect January 1, 1977.

\*\*Estimated



**SUMMARY OF STATUTORY  
PROVISIONS OF EACH STATE  
THAT HAS PASSED A VICTIM  
COMPENSATION PROGRAM**

State	Statutory Authority	Department & Agency Name	Maximum Compensation	Maximum Attorney Fees	Recovery From Collateral Source	Emergency Compensation <sup>a</sup>	Subrogation	Court Imposed Fines	Recovery From Criminal
Alaska	Ch. 203 SLA 1972 Health & Safety Code, Sections 18.62.101 et seq.	Department of Health & Social Services, Violent Crimes Compensation Board	\$25,000 per incident per victim \$40,000 In the case of death	25% of 1st \$1,000 awarded 15% of \$1,000 to \$10,000 awarded 7.5% of amounts awarded in excess of \$10,000	Yes	Yes, not to exceed \$500	Yes	No	No
California	California Government Code Section 13959 et seq.	State Board of Control	Medical \$10,000 Wage Loss \$10,000 Job Retraining and/or re- habilitation \$3,000	10% of award or \$500 whichever is less	No	No	Yes	Yes, if court finds defendant has present ability to pay and finds economic impact on defendant's dependents will not cause them to be dependent on welfare	Yes
Delaware	59 Del. Laws Ch. 519 Title 11, Sections 9001 et seq.	Violent Crimes Compens- ation Board	\$10,000	\$1,000 or 15% of award whichever is less	Yes	No	No	Yes, 10% added to every fine assessed a- gainst any criminal defendant. Court may also fine criminal up to amount of compen- sation paid	Yes, State may institute action in any Superior Court to recover amount of compensation
Georgia	Acts, 1967 pp. 712-716 Georgia Statutes Sections 47-520 et seq.	Claims Advisory Board which makes recommen- dations for compensation to the General Assembly	\$ 5,000	N/A	Yes	No	Yes	No	Yes
Hawaii	L. 1967, Ch. 226 Social Services Code, Sections 351-1 et seq.	Criminal Injuries Compensation Commission, Dept. of Social Services Note - 3 members which are paid \$50/meeting up to \$6,600/year. Chairman- \$55/meeting up to \$7,200/ year	\$10,000	Reasonable as determined by the commission but not to exceed 15% of award or \$1,000 whichever is less	Yes	No	No	No	Yes

<sup>a</sup>Emergency Compensation is granted only if it appears likely a final award will be made and the claimant will suffer financial hardship unless immediate payment is made.

State	Statutory Authority	Department & Agency Name	Maximum Compensation	Maximum Attorney Fees	Recovery From Collateral Source	Emergency Compensation	Subrogation	Court Imposed Fines	Recovery From Criminal
<u>Illinois</u>	P.A. 78-359, effective 10/73 Article 70 Sections 71 et.seq.	Court of Claims	\$10,000	Reasonable as determined by the Court of Claims	Yes, except annuities, pension plans, Social Security and 1st \$25,000 of life insurance	No	Yes	No	Yes
<u>Kentucky</u>	Acts 1976, Ch. 263 Labor & Human Rights Note: 5 members appointed by the governor for 4 year term. Compensation for Code Sections 346.010 member is established by the governor et.seq.	Victims Compensation Board Note: 5 members appointed by the governor for 4 year term. Compensation for member is established by the governor et.seq.	\$15,000	N/A	Yes	Yes, not to exceed \$500	Yes	No	Yes, called "debt" to state
<u>Louisiana</u> Law was repealed during 1976 session									
<u>Maryland</u>	1968, Ch. 455 Art. 26A Section 1 et.seq.	Dept. of Public Safety and Correctional Services, Criminal Injuries Compensation Board. Note: 3 members whose salary is provided for in the annual budget	Unlimited	Based upon rules promulgated by the Board	Yes	Yes, not to exceed \$500	Yes	Yes, additional fine of \$5.00 imposed on any person convicted of any crime except violation of Art.66-1/2 (Motor Vehicles) or 66C (Natural Resources)	No
<u>Massachusetts</u>	Acts 1967, Ch. 852 Ass. Statutes Volume 9 Ch. 258A Sections 1 et.seq.	District Courts have jurisdiction to determine and award compensation to victims of crimes  The Chief Justice of the District Court and the Chief Justice of Municipal Court of Boston shall formulate standards for the uniform application of the chapter	15% of award		Yes	No	Yes	No	No
<u>Michigan</u>	Act 223, 1976 MCL Sec. 18.351 Sections 3.372(1) et.seq.	Crime Victims Compensation Board, Dept. of Management and Budget Note: 3 members appointed by the governor for 3 years. Chairman's salary fixed by appropriation. Members are paid on a per diem basis as determined by the legislature	\$15,000	N/A	N/A	Yes, not to exceed \$500	Yes	No	Yes, at the disposition of the court

<u>State</u>	<u>Statutory Authority</u>	<u>Department &amp; Agency Name</u>	<u>Maximum Compensation</u>	<u>Maximum Attorney Fees</u>	<u>Recovery From Collateral Source</u>	<u>Emergency Compensation</u>	<u>Subrogation</u>	<u>Court Imposed Fines</u>	<u>Recovery From Criminal</u>
<u>Minnesota</u>	Laws 1974, Public Safety Code, Sections 299B.01 et seq.	Dept. of Public Safety, Crime Victim Reparations Board	\$10,000	Set by the Board	Yes	Yes	Yes	No	Yes
<u>Nevada</u> Good Samaritan Program only	NRS 1969, 1151 Ch. 217 Sections .010 et seq.	State Board of Examiners	\$5,000. Nevada also provides up to \$1,000 to be paid by the county for psychological treatment for rape victims or their spouses	Not to exceed 10% of award	Yes	Yes, amount as ordered by the Board	Yes	No	Yes
<u>New Jersey</u>	L. 1971, Ch. 317 Government Code, Sections 52-4b-1 et seq.	Executive Branch Violent Crimes Compensation Board which consists of three full-time members who are paid the same annual compensation as Judges	\$10,000	Not to exceed 15% of award	Yes	No	Yes	No	Yes
<u>New York</u>	L. 1966, Ch. 894 Article 22 Sections 620 et seq.	Executive Department Crime Victims Compensation Board. Note: 5 members full-time; salary is fixed by the governor. Members serve seven year terms	Loss of earnings or support. \$135 per week not to exceed \$15,000	N/A	Yes	Yes, not to exceed \$500	Yes	No	No
<u>North Dakota</u>	S.L. 1975, Ch. 587 Workmen's Compensation Code, Sections 65-13-01 et seq.	Workmen's Compensation Bureau	\$25,000	Reasonable as determined by the Bureau	Yes	Yes	Yes	No	No
<u>Ohio</u>	Ch. 2743 Revised Code, Sections 2743.01 et seq.	The Court of Claims Commissioners, Victims of Crime Division. Note: 3 commissioners who are appointed by and whose compensation is set by the Supreme Court	\$50,000	Reasonable as determined by commissioners	Yes	Yes	Yes	Yes, a \$3.00 fine is imposed on a person who is convicted or pleads guilty to any offense other than non-moving traffic offenses	Yes

State	Statutory Authority	Department & Agency Name	Maximum Compensation	Maximum Attorney Fees	Recovery From Collateral Source	Emergency Compensation Yes, not to exceed \$1,000	Subrogation Yes	Court Imposed Fines Yes, \$10.00 is added for each conviction, guilty plea or plea of nolo contendere	Recovery From Criminal Restitution to victim by court
Pennsylvania	Act 139, 1976, Title 18 Sections 477 et seq.	Crime Victims Compensation Board. Note: 3 members appointed by the governor for 6 years. Chairman's salary is \$25,500 per year, other members \$25,000 per year	\$25,000 for expenses \$15,000 for loss of earnings	N/A	Yes	Yes, not to exceed \$1,000	Yes	Yes, \$10.00 is added for each conviction, guilty plea or plea of nolo contendere	Restitution to victim by court
Rhode Island	Law was to become effective upon passage of federal act which failed passage								
Tennessee	Acts 1976 (Adg. S.) Ch. 736, Section 1, Tennessee Statutes Section 23-3501 et seq.	Circuit Courts of State of Tennessee	\$10,000	Not to exceed 15% of award	Yes	Yes, not to exceed \$500	Yes	No	No
Virginia	1976 Acts, Ch. 605 Title 19.2a Sections 19.2-388.1 et seq.	Industrial Comp. of Virginia, Criminal Injuries Compensation Fund. Commences 7/1/77	\$10,000 including \$500 for burial expenses	N/A	Yes	Yes, not to exceed \$1,000	Yes	Yes, a \$10 fine upon conviction for certain offenses (treason, felony, drunkenness, disorderly conduct and certain misdemeanors)	N/A
Washington	1973, Ch. 122 Special Proceedings Ch. 7, 68 Sections .010 et seq.	Department of Labor and Industries	\$7,500 plus burial expenses	N/A	Yes	No	Yes	No	Any person who has committed a criminal act which resulted in the payment of injury compensation by the State may be required to make reimbursement to the Dept. of Labor and Industries
Wisconsin	L. 1975, Ch. 344 Criminal Code, Sections 949.01 et seq.	Department of Industry Labor and Human Relations	\$10,000 plus \$2,000 funeral expenses	Not to exceed 20% of award	Yes	Yes, not to exceed \$500	Yes	No	No

Office of the Auditor General

cc: Members of the Legislature  
Office of the Governor  
Office of the Lieutenant Governor  
Secretary of State  
State Controller  
State Treasurer  
Legislative Analyst  
Director of Finance  
Assembly Office of Research  
Senate Office of Research  
Assembly Majority/Minority Consultants  
Senate Majority/Minority Consultants  
California State Department Heads  
Capitol Press Corps